

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
MAR 03 2005

CLERK

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.) Case No. 4:05 CR 40016
)
REYES FABIAN OLIVERA-MENDEZ,)
Defendant.)

DEFENDANTS MOTION FOR A BILL OF PARTICULARS

REYES FABIAN OLIVERA-MENDEZ, by and through his counsel, respectfully moves this Honorable Court, pursuant to Federal Rule of Criminal Procedure 7(f), to require the United States to file and serve a Bill of Particulars in the pending case and would allege in furtherance as follows:

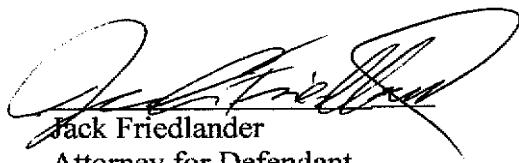
1. OLIVERA-MENDEZ is charged with multiple counts in a two-defendant case apparently arising out of a reverse sting controlled and operated by the government.
2. The indictment is sparse and contains only the statutory language of the counts charged, and no additional facts.
3. The indictment fails to fully inform and advise OLIVERA-MENDEZ with necessary particularity and of definite specific matters that OLIVERA-MENDEZ would be called upon to defend at trial.
4. The purpose of the Bill of Particulars under Rule 7 is to inform the Defendant of charges against him in sufficient detail that he may prepare his defense and minimize surprise at trial. *United States v. Miller*, 543 F.2d 1221 (8th Cir.

1976), *cert. denied*, 97 S.Ct. 1142; *see also United States v. Brimly*, 529 F.2d 103 (6th Cir. 1976).

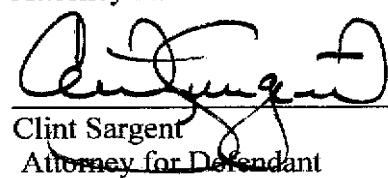
5. Further, although whether to order a Bill of Particulars is within the discretion of the Court, *United States v. Harbin*, 601 F.2d 773 (5th Cir. 1979), *cert. denied*, 100 S.Ct. 443, the Court should exercise this discretion liberally in accordance with the facts and circumstances of each case. See Advisory Committee's Note to Amended Rule No. 7 (1966).

WHEREFORE, Defendant respectfully prays this Honorable Court to Order The United States Attorney to furnish OLIVERA-MENDEZ with a Bill of Particulars.

Respectfully Submitted,



Jack Friedlander
Attorney for Defendant



Clint Sargent
Attorney for Defendant

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